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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Appellant,

v.

NATHAN GIDEON,

Defendant and Respondent.

A124694

(Contra Costa County
Super. Ct. No. 050702274)

After one judge refused to approve a proposed plea agreement in a murder case, a second judge granted respondent Nathan Gideon's motion for specific performance of it. (Pen. Code,¹ § 187.) Judgment—a 13-year sentence for voluntary manslaughter—was entered according to the terms of the original plea agreement. (Former § 192 [as amended by Stats. 1998, ch. 278, § 1].) The People appeal,² contending inter alia that Gideon was not entitled to specific performance of the rejected plea agreement, and that the second judge had no power to override the first judge's rejection of the proposed plea

¹ All statutory references are to the Penal Code.

² The People filed a timely notice of appeal from Judge Mary Ann O'Malley's order granting the motion to abide by the terms of the plea agreement, forcing the prosecution to re-offer the plea agreement that Judge Theresa J. Canepa had rejected, and setting aside the murder charge. This appeal is authorized as an appeal from an order setting aside part of an information and as an order dismissing any part of a criminal action. (§ 1238, subd. (a)(1), (8); see *People v. McClaurin* (2006) 137 Cal.App.4th 241, 246-248 [order directing specific performance of plea agreement is appealable by People].)

agreement. We agree and thus, reverse both the challenged order and the resulting judgment of conviction.

I. FACTS³

A. Circumstances of the Crime

On March 22, 2006, appellant Nathan Gideon and Stephen Hauser shared one of three living units in a Treat Boulevard house in Concord. A resident of one of the other units heard Gideon yelling at Hauser. This was a common occurrence, so she did not think anything unusual had occurred. Later, she heard moans and calls for help coming from their unit, so she went to investigate. She saw Gideon covered in blood and Hauser lying on the ground in the unit. Gideon offered her his bloodstained cordless phone and asked her to call 911. He told his neighbor that he had “stabbed Stephen” in retaliation after Hauser had attacked him. The neighbor declined the use of the bloodstained telephone, but she returned to her own unit, locked herself in and used her cell phone to contact police.

Gideon made his own call to 911 about the incident. He asked for an ambulance for Hauser. He told the dispatcher that he had been attacked by Hauser, who tried to choke him to death. This choking attack prompted Gideon to stab Hauser.

When the Concord police arrived about 3:25 p.m. that afternoon, they saw Gideon walk out of the house, talking on his cordless phone. His upper body was stained with blood, but he had no visible injuries other than a bandaged thumb.⁴ He had some clothing in his hands. The police instructed him to drop the clothing and the phone. Gideon did so. At first, Gideon seemed nonchalant. He was handcuffed by police. While being led to a patrol car, Gideon became agitated, demanding that the officer collect his possessions. He began to resist being led to the patrol car. When the escorting officer told him that someone else would do this, Gideon said that if the escorting officer did not get them, he would take a swing at the officer.

³ This statement of facts is based on the preliminary hearing transcript.

⁴ Later, police concluded that Gideon had suffered a minor knife cut.

The police entered the unit and found Hauser lying on his back near the kitchen counter. He was moaning and critically wounded from numerous stab wounds. Blood poured out of his body; he drifted in and out of consciousness; and he made gurgling sounds when he asked for help. Emergency personnel treated Hauser and he was taken by ambulance to a hospital, where he underwent emergency surgery. Later that night, Hauser died from his wounds.

Bloodstains were found all over the unit and a knife lying in a large pool of blood was found on the kitchen counter. The house served as a rooming house for persons with mental health issues. A neighbor told police that she believed that Gideon was schizophrenic and that she had observed him talking to people who were not present.⁵ Another neighbor told police that she never heard Gideon threaten Hauser, but she thought that Gideon would react if his “buttons were pushed.” Medications were found in the bedrooms that apparently belonged to Gideon and to Hauser. Gideon’s sometime girlfriend told police that he had stopped taking his psychiatric medications in September 2005. He began displaying more delusional behavior and responses to nonexistent stimuli after this time. He had been violent toward her, resulting in a domestic violence charge. (Former § 273.5, subd. (a) [as amended by Stats. 2000, ch. 287, § 5].)

B. Charges and Plea Discussions

On March 24, 2006, a complaint was filed, charging Gideon with the murder of Hauser. The complaint also alleged a sentence enhancement allegation that Gideon used a deadly weapon in the commission of this offense. After a preliminary hearing, Judge O’Malley concluded that Gideon could not be held to answer for first degree or second degree murder because no evidence of premeditation or deliberation was presented. She determined that he could be held to answer for manslaughter, though. He was formally held to answer for homicide. There was also sufficient evidence to hold him to answer

⁵ During an interview at the police department, an officer observed that Gideon appeared to be talking to someone when he was alone in the interview room. There was also evidence that when the police attempted to obtain a *Miranda* waiver (*Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*)) from Gideon, his behavior was erratic and unusual.

for the alleged enhancement of using a knife as a deadly weapon. (§§ 187, 12022, subd. (b)(1).)

In February 2007, an information charged Gideon with murder with malice aforethought. The information also alleged that he used a knife—a dangerous and deadly weapon—in the commission of this offense. (§§ 187, 12022, subd. (b)(1).) Gideon pled not guilty.

Investigations suggested that both Gideon and Hauser had well-documented mental health histories and that a struggle had occurred at the scene of the crime. In August 2007, Gideon’s public defender began plea negotiations with a representative of the district attorney’s office. Ultimately, the prosecution offered to amend the information to add a second count of voluntary manslaughter. If Gideon would plead guilty to that charge and would admit the deadly weapon use enhancement and plead guilty to the pending domestic violence charge, it would agree to a 13-year sentence—11 years for voluntary manslaughter, one year for the weapon enhancement, and one year for the domestic violence charge. (§ 12022, subd. (b)(1); former §§ 192, 273.5.) After consulting with Gideon and obtaining his consent, defense counsel indicated his client’s intent to formally accept the manslaughter plea offer.

C. Proceedings Before Judge Canepa

On September 28, 2007, the prosecutor advised the trial court about the terms of the proposed disposition. At the beginning of the hearing, Judge Canepa indicated that she intended to take the plea that day, but would defer sentencing. Then, at the prosecutor’s request, Judge Canepa heard statements from Hauser’s family and friends. They characterized the killing of Stephen Hauser as a planned act of violence by Gideon and reasoned that the evidence did not support a reduction of the charge to manslaughter.

The prosecutor outlined the factual and legal bases for its conclusion that the circumstances leading to Hauser’s death constituted manslaughter. He cited Gideon’s statement during his 911 call characterizing his action as reactive; an incomplete *Miranda* waiver that rendered inadmissible key incriminatory evidence against Gideon; and the difficulties of proving an imperfect self-defense case. These factors persuaded the

prosecution that the likely outcome of a jury trial against Gideon would be a voluntary manslaughter verdict.

Gideon's public defender also urged Judge Canepa to accept the negotiated disposition, noting that the prosecution would have the burden of showing that the killing did not occur in self-defense. She argued that the forensic evidence and the disparate sizes of Gideon and Hauser were consistent with a finding of self-defense. She also cited her client's lengthy history of mental health issues as a factor favoring approval of the plea agreement.

At the conclusion of the hearing, Judge Canepa opted not to take the guilty plea, but took the matter under submission. She intended to review the police reports, the autopsy report and the preliminary hearing transcript before deciding whether or not to allow Gideon to plead guilty. She continued the matter until October 11, 2007. In the meantime, the public defender wrote Judge Canepa to urge her again to accept the proposed disposition. The letter countered various objections to the agreement as well as outlining the evidence tending to support a manslaughter finding.

On October 11, 2007, Judge Canepa acknowledged reviewing the documents she sought at the end of the last hearing, as well as the public defender's letter, Hauser's medical records, various records about mental health issues, and relevant case law. The prosecution stated that it believed that a reasonable jury could come up with any of several verdicts—guilty of murder, guilty of voluntary manslaughter after a finding of imperfect self-defense, or not guilty after a finding of perfect self-defense. Its offer of 13 years for manslaughter and related matters was based on those factual and legal conclusions, the prosecutor stated.

Judge Canepa evaluated the case and—based on the nature and number of the stab wounds—concluded that she could not accept the proposed disposition. A jury's determination of the degree of homicide would be based on the number and nature of the wounds, the relationship of the parties, prior acts of violence, and other matters that would be best for a jury to determine. For those reasons, she rejected the plea agreement and set the case on course for trial.

D. Subsequent Proceedings Before Judge O'Malley

Over the course of the next 15 months, Gideon repeatedly waived his right to a speedy trial. Shortly after the October 11, 2007 hearing, his public defender went on maternity leave, and in January 2008, a new public defender began to represent him. A year later, in January 2009, Gideon indicated that he intended to seek specific performance of the plea agreement.

A formal motion to compel the prosecution to abide by the terms of the plea agreement was filed in February 2009. In it, Gideon acknowledged that Judge Canepa had rejected the proposed plea agreement. Despite this admission, he argued that the prosecution had failed to abide by its terms, such that his due process rights had been violated. He observed that the district attorney's office had never indicated to Gideon's counsel that it intended to revoke its manslaughter plea offer. He asserted that he had relied on that offer to his detriment and urged the trial court to find that he was entitled to the benefit of the bargain.

For its part, the prosecution opposed the motion to abide by the terms of the plea agreement. It argued *inter alia* that the trial court lacked jurisdiction to entertain the motion for specific performance of a plea agreement that had been rejected by another judge.

On February 25, 2009, Judge O'Malley—who conducted the preliminary hearing in this matter—heard Gideon's motion to abide by the terms of the plea agreement. After hearing Hauser's mother seek a murder conviction against Gideon, the public defender argued that the forensic evidence was consistent with the conclusion that his client acted in self-defense. Given Gideon's mental health history, the case was one of imperfect self-defense—or a voluntary manslaughter finding.

The public defender argued that Gideon had relied on the plea agreement to his detriment, for several reasons. His case involved a particularly complicated imperfect self-defense case in which the victim, defendant and the percipient witnesses all exhibited mental health problems. The public defender who had represented Gideon at the preliminary hearing stage had been much more familiar with the intricacies of his

complex defense than his current counsel. Gideon had waived his right to a speedy trial for a significant period of time, such that the memories of witnesses would be less reliable, particularly given their mental health issues. The public defender argued that his client had detrimentally relied on the prosecution's plea offer. He urged the trial court to conclude that specific performance of the plea agreement was required to avoid a violation of Gideon's due process rights.

Judge O'Malley found that a plea offer had been made by the prosecution, had been accepted by Gideon, and was accepted by Judge Canepa before the hearing occurred. "Judge Canepa had let both parties know that [the plea offer] sounded reasonable and that she would accept that offer" at the hearing, but that once the hearing was conducted, she changed her mind. Judge O'Malley found that Gideon had detrimentally relied on the plea, because of the effect of the time delay on the evidence—primarily, the testimony of the witnesses—in this matter. The remedy for this due process violation was for the People to offer the plea agreement again.

Judge O'Malley granted the motion for specific performance of the plea agreement. Under the compulsion of that ruling, the People moved to amend the information to add a charge of voluntary manslaughter. The trial court amended the information on its face in this manner, accepted Gideon's no contest plea to this count, and accepted the truth of his admission of the weapons use enhancement. (See § 12022, subd. (b)(1); former § 192.) Again, in accordance with the trial court's ruling, the prosecution moved to dismiss the remaining murder charge, which the trial court granted. Gideon was sentenced to 13 years in state prison, in a disposition that completed both the homicide and the domestic violence cases. The People appeal.

II. SPECIFIC PERFORMANCE

A. Legal Principles

The People challenge the trial court's order granting Gideon's motion for specific performance of the plea agreement on various grounds. Among those reasons, they contend that Gideon was not entitled to specific performance of a rejected plea agreement and that Judge O'Malley had no power to override Judge Canepa's rejection of the

proposed plea agreement. As we shall explain, we agree with the People's claims of error.

A plea agreement is a three-part contract that requires the consent of the defendant, the People and the trial court. (*In re Kenneth H.* (2000) 80 Cal.App.4th 143, 148.) In order for a plea agreement between a criminal defendant and the prosecution to be valid and enforceable, it must be approved by the trial court. (§§ 1192.1, 1192.3, subd. (a), 1192.5; *In re Alvernaz* (1992) 2 Cal.4th 924, 940-941 [petn. for writ of habeas corpus granted in *Alvernaz v. Ratelle* (S.D.Cal. 1993) 831 F.Supp. 790]; *People v. Orin* (1975) 13 Cal.3d 937, 942-943; *People v. Stringham* (1988) 206 Cal.App.3d 184, 194; *In re Kenneth H.*, *supra*, 80 Cal.App.4th at p. 148.) Particularly when—as here—the proposed plea agreement limits the trial court's sentencing discretion, the defendant and the prosecution may not make an agreement that binds the trial court's exercise of that discretion without its consent. (*In re Alvernaz*, *supra*, 2 Cal.4th at p. 942; *People v. Stringham*, *supra*, 206 Cal.App.3d at p. 201; *People v. Daugherty* (1981) 123 Cal.App.3d 314, 322; see *People v. Delgado* (1993) 16 Cal.App.4th 551, 555.)

A trial court's approval of a proposed plea agreement must be an informed decision. (*People v. Stringham*, *supra*, 206 Cal.App.3d at p. 194.) In exercising the discretion to approve or reject a proposed plea agreement, a trial court is charged with protecting and promoting the public interest in vigorous prosecution of the accused, the imposition of appropriate punishment, and the protection of crime victims. (*In re Alvernaz*, *supra*, 2 Cal.4th at p. 941.) If a defendant's offer to plead guilty—even if accepted by the prosecution—is not also approved by the trial court, then the proposed plea agreement has no effect. (*Ibid.*; see *People v. Orin*, *supra*, 13 Cal.3d at pp. 942-943.) With these principles in mind, we turn to the legal issues before us.

B. Judge Canepa Rejected the Proposed Plea Agreement

The record on appeal demonstrates that Judge Canepa rejected the proposed plea agreement. It does not support Judge O'Malley's finding that Judge Canepa first approved the plea agreement and then withdrew her approval. At the September 2007 hearing, Judge Canepa indicated only that she was "inclined" to take the plea. She did

not actually take Gideon's plea at that time. Instead, she heard statements from Hauser's friends and family. Judge Canepa never took Gideon's guilty plea because she rejected the proposed plea agreement. Gideon's own motion for specific performance acknowledges the rejection of the proposed plea agreement. Thus, insufficient evidence supports Judge O'Malley's underlying factual finding that Judge Canepa initially approved the proposed plea agreement.

Even if Judge O'Malley properly concluded that Judge Canepa initially approved the plea agreement and later withdrew that approval, Judge Canepa would have been within her lawful authority to do so. Even if a trial court initially approves a plea agreement, it remains free to withdraw that approval at a later time. (§ 1192.5; *In re Alvernaz*, *supra*, 2 Cal.4th at p. 942 [citing development of additional information or changed circumstances; specific performance of failed plea agreement is not constitutionally compelled remedy]; *People v. Mancheno* (1982) 32 Cal.3d 855, 861-862; *People v. Johnson* (1974) 10 Cal.3d 868, 873; *People v. Tung* (1994) 30 Cal.App.4th 1607, 1611; see *People v. Stringham*, *supra*, 206 Cal.App.3d at pp. 194-196, 199-201 [trial court has "near-plenary power" to retract its approval, once given]; *People v. Daugherty*, *supra*, 123 Cal.App.3d at p. 322.)

C. Judge Canepa's Decision Was an Act Within Her Discretion

We conclude that Judge Canepa acted within her lawful authority when she rejected the proposed plea agreement. A trial court has broad discretion to approve or reject a proposed plea agreement. (See *People v. Stringham*, *supra*, 206 Cal.App.3d at pp. 199-200.) At the conclusion of the first hearing on the proposed plea agreement, Judge Canepa took the proposed guilty plea under submission, sought further evidence that would bear on her decision, and reviewed that evidence. Ultimately, she exercised her discretion to reject the proposed plea agreement for the reasons she stated on the record. Gideon does not contend that this decision was an abuse of her discretion. We conclude that Judge Canepa's rejection of the proposed plea agreement was an act within

her discretion. (See, e.g., *People v. Stringham*, *supra*, 206 Cal.App.3d at p. 200.)⁶ Once Judge Canepa lawfully rejected the proposed plea agreement, it had no more legal force. (*In re Alvernaz*, *supra*, 2 Cal.4th at p. 941.)

D. Judge O'Malley's Order Was Improper

Gideon characterizes Judge O'Malley's action as a correction of a systemic error that violated his due process rights. We disagree. An order made in one department of the trial court cannot be ignored or overlooked in another. (*People v. Goodwillie* (2007) 147 Cal.App.4th 695, 713; *People v. Riva* (2003) 112 Cal.App.4th 981, 991; *In re Alberto* (2002) 102 Cal.App.4th 421, 428.) The power of one judge to reverse an order made by another judge is limited,⁷ in order to protect the integrity of the courts and the orderly administration of justice. To do otherwise would encourage forum shopping—taking an issue to another judge once the first trial judge denied relief—and would effectively elevate the second judge to a “one-judge appellate court.” (*People v. Goodwillie*, *supra*, 147 Cal.App.4th at p. 713; *In re Alberto*, *supra*, 102 Cal.App.4th at pp. 426-429; see *People v. Woodard* (1982) 131 Cal.App.3d 107, 109-111.)

Judge O'Malley lacked jurisdiction to overrule Judge Canepa's rejection of the proposed plea agreement.⁸ As such, her order granting specific performance of the rejected plea agreement was void and the resulting criminal judgment against Gideon must be reversed.⁹

⁶ Assuming *arguendo* that Judge Canepa gave an initial off-the-record approval to the proposed plea agreement, her later rejection of it would also have been an act within her discretion.

⁷ There are a few exceptions, none of which have been shown to apply to the case before us. (See *People v. Goodwillie*, *supra*, 147 Cal.App.4th at pp. 713-714; *People v. Riva*, *supra*, 112 Cal.App.4th at pp. 991-993.)

⁸ We observe that a wronged defendant is not left without a remedy. If the defendant has no other proper means of relief, he or she may seek an extraordinary writ in an appellate court. (*People v. Riva*, *supra*, 112 Cal.App.4th at p. 991; *People v. Woodard*, *supra*, 131 Cal.App.3d at p. 111.)

⁹ In light of the conclusion that there was no enforceable plea agreement, we need not determine whether substantial evidence supports Judge O'Malley's finding of detrimental reliance on that agreement.

III. DISPOSITION

Judge O'Malley's order granting specific performance of the plea agreement rejected by Judge Canepa is reversed. The resulting judgment of conviction against Gideon and prison sentence is also reversed. The matter is remanded to the trial court for further proceedings.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.

We also conclude that the autopsy report is not relevant to our determination. The People augmented the record on appeal to include the autopsy report. In October 2009, we granted the People's motion to augment, but did so without any determination of relevance of that report. In light of our findings, we conclude that the proffered evidence is not relevant to the issues on appeal.